

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
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Connect America Fund) WC Docket No. 10-90
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ORDER

Adopted: February 9, 2022

Released: February 9, 2022

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) addresses a Petition filed by Red River Telephone Association (Red River) requesting waiver of the Commission’s rules as necessary to issue a revised Alternative Connect America Cost Model (A-CAM) II offer.¹ Due to an error in the FCC Form 477 service coverage data provided by a neighboring service provider, a number of census blocks served by Red River were deemed ineligible for A-CAM II support.² For the reasons described below, the Bureau finds that granting Red River’s waiver request is in the public interest and extends a revised offer.

I. BACKGROUND

2. In December 2018, the Commission adopted a new model support offer – A-CAM II – for rate-of-return carriers subject to legacy support mechanisms.³ Pursuant to the parameters established for A-CAM II, census blocks were ineligible for support if they were served with 25/3 Mbps or faster broadband service by an unsubsidized competitor.⁴ Unsubsidized competitor broadband coverage was determined using the most recently available FCC Form 477 data at the time, which reflected data provided as of December 2017.⁵ The Commission declined to adopt a process to allow carriers to challenge unsubsidized competitor broadband coverage data, as it had in A-CAM I, relying in part on the

¹ Red River Telephone Association DBA Red River Communications Petition for Waiver of the Election Deadline for A-CAM II and Request for a Revised A-CAM II Offer, WC Docket No. 10-90 (filed July 11, 2019) (*Red River Petition*).

² *Id.* at 2.

³ *Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime*; WC Docket Nos. 10-90, 14-58, and 07-135, CC Docket No. 01-92; Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11903-915, paras. 31-69 (2018) (*December 2018 Rate-of-Return Reform Order*).

⁴ *Id.* at 11907-08, paras. 46-49.

⁵ *Id.* at 11908-09, paras 50-51.

low success rate of challenges in that instance.⁶ On May 2, 2019, the Bureau issued A-CAM II offers based on the parameters established by the Commission.⁷

3. Red River is a rate-of-return carrier whose study area includes parts of Minnesota, North Dakota, and South Dakota. On July 11, 2019, Red River filed the present petition, asking the Commission to extend the deadline for electing A-CAM II sufficiently to provide time for the Bureau to issue a revised offer to Red River.⁸ Specifically, Red River asked for a revised offer reflecting a correction of FCC Form 477 data filed by City of Barnesville Municipal Telephone (Barnesville), an adjacent incumbent local exchange carrier in Minnesota.⁹ Barnesville's December 2017 FCC Form 477 data had erroneously included census blocks outside its study area, which resulted in the exclusion of census blocks from Red River's A-CAM II offer.¹⁰ Red River elected its A-CAM II offer prior to the July 17, 2019, deadline, but expressly noted that it "reserved the right to accept a revised A-CAM II offer in the event that the Bureau acts favorably on its pending petition."¹¹

II. DISCUSSION

4. The Bureau may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Bureau may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³ Waiver of the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.¹⁴ We find that the circumstances described by Red River meet this standard and, accordingly, grant Red River's petition for waiver.

5. Red River argues that, while the Commission declined to adopt a formal process in A-CAM II to challenge unsubsidized competitors' coverage data, the precedent of the A-CAM I challenge process supports issuing a corrected A-CAM II offer here.¹⁵ Specifically, Red River notes that the Commission routinely granted challenges in A-CAM I when, as here, the alleged unsubsidized competitor conceded that its coverage data was inaccurate.¹⁶

6. We agree with Red River that a waiver is warranted to provide a corrected A-CAM II offer. In declining to adopt a challenge process for A-CAM II, the Commission sought to avoid a time-

⁶ *Id.* at 11908-10, paras. 50-54.

⁷ *Wireline Competition Bureau Announces Alternative Connect America Cost Model II Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 19-372 (WCB May 2, 2019) (*A-CAM II Offer Public Notice*); The Bureau issued offers correcting FCC errors in holding company cross-reference and model settings on June 5, 2019. *Wireline Competition Bureau Issues Corrected Connect America Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, WC Docket No. 10-90, Public Notice, DA 19-504 (WCB June 5, 2019).

⁸ *Red River Petition*.

⁹ *Id.*

¹⁰ *Id.* at 2. Barnesville filed a letter indicating that it would correct its FCC Form 477 data on June 4, 2019. *Id.* at Attach.

¹¹ Email from Jeff Olson, Red River Telephone Association, to ConnectAmerica@fcc.gov (sent July 16, 2019) (electing A-CAM II offer).

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Red River Petition* at 3-5.

¹⁶ *Id.*

consuming and labor-intensive process that it believed, based on prior experience, would yield relatively minor benefits and delay implementation of A-CAM II.¹⁷ As Red River notes, voluntary corrections of good faith errors by the FCC Form 477-filing unsubsidized parties themselves were an exception to the Commission's general experience that A-CAM I challenges were not productive.¹⁸ Given that Barnesville voluntarily filed corrected FCC Form 477 data for December 2017, the Bureau was able to prepare a corrected offer without a time-consuming fact-finding process. Other than the use of December 2017 FCC Form 477 data on file at the time of the initial A-CAM II offer, the corrected offer is fully consistent with the parameters set forth by the Commission in the *December 2018 Rate-of-Return Reform Order*.

7. Further, because Red River accepted A-CAM II and has reported deployment of at least 25/3 Mbps service to 2,151 currently eligible locations, Red River will be able to meet its interim deployment obligations, even with the addition of new eligible locations.¹⁹ No further waiver will be required with respect to Red River's interim or final deployment obligations. As a result, the administrative burdens of authorizing a new offer to Red River are minimal. We also waive our broadband deployment reporting rules to the extent necessary to allow Red River to report previous deployment in the newly eligible census blocks that it would otherwise not be permitted to report because the deadline has passed. Because the census blocks were not previously eligible, Red River was not permitted to report deployment to locations in those census blocks at the time they would have been required.

8. The Bureau extends a revised A-CAM II offer to Red River. Red River's revised support, obligations, and eligible census blocks pursuant to the offer are specified in the Red River Offer Report.²⁰ In order to be authorized, Red River must file a revised letter electing the offer within 15 days of the release of this Order.²¹ Pursuant to this offer, Red River would receive \$5,929,055 per year over a ten-year term beginning January 1, 2019.²² If accepted, Red River would be obligated to provide at least 25/3 Mbps service to 2,284 eligible locations and at least 4/1 Mbps service to 347 eligible locations, increases from 1,628 eligible locations and 287 eligible locations, respectively.²³

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, the Red River Telephone Association's Petition for Waiver of the Commission's Alternative Connect America Cost Model support rules IS GRANTED.

¹⁷ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11908-09, para. 50.

¹⁸ *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 7790, 7800-01, paras. 37-39 (2016) (granting 40 challenges to coverage data based on a declaration provided by the challenged party).

¹⁹ See *Connect America Fund Broadband Map* (available at <https://data.usac.org/publicreports/caf-map/>).

²⁰ See *Red River Offer Report*, available at: <https://www.fcc.gov/document/caf-ii-cam-252-red-river-offer-report>.

²¹ Red River should submit its election letter to the Bureau at ConnectAmerica@fcc.gov. To elect the revised support amount, Red River must submit a letter signed by an officer of the company confirming that the carrier elects the A-CAM II support amount as specified in the Red River Offer Report released today and commits to satisfy the specific service obligations associated with that amount of model-based support. If it elects the A-CAM II support, Red River will not begin receiving such support until the Bureau issues a public notice authorizing the Universal Service Administrative Company to disburse the appropriate amounts.

²² See *Red River Offer Report*. If authorized, USAC shall provide retroactive adjustments to support since January 1, 2019. We note that the offered amount is approximately \$400,000 less than the amount estimated by Red River in its Petition. *Red River Petition* at 2. Red River's estimate included three census blocks that remain ineligible even after Barnesville's correction and other minor calculation errors.

²³ *Red River Offer Report*.

10. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau